



# STATE OF CONNECTICUT

## OFFICE OF STATE ETHICS

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### Draft Advisory Opinion No. 2012-6

May 17, 2012

**Question Presented:**

The petitioner asks whether a client registrant may pay a Connecticut state court judge's "necessary expenses" in connection with the judge's speech at the registrant's conference; and if so, whether there are any reporting requirements.

**Brief Answer:**

Yes. A client registrant may pay the judge's "necessary expenses" in connection with his or her speech at the registrant's conference, but must file a statement with the Office of State Ethics if the value of the "necessary expenses" is \$10 or more.

At its May 2012 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by Cynthia Isales, Assistant General Counsel with the Office of State Ethics. In accordance with General Statutes § 1-81 (a) (3), the Board now issues this advisory opinion. It is limited to questions arising under the Codes of Ethics<sup>1</sup> and does not purport to interpret any other laws or rules.

### **Analysis**

Before addressing the petitioned question, namely, whether a

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<sup>1</sup>Chapter 10, parts I and II, of the General Statutes.

client registrant<sup>2</sup> may pay a Connecticut state court judge's "necessary expenses"<sup>3</sup> in connection with the judge's speech at the registrant's conference, we must address a more fundamental one: whether a Connecticut state court judge is a "public official" or "state employee," for purposes of the Lobbyist Code. If not, our inquiry is over and the client registrant is—at least as concerns the Lobbyist Code—free to give the Connecticut state court judge whatever it pleases.

The answer to that question is a matter of statutory construction, the fundamental objective of which "is to ascertain and give effect to the apparent intent of the legislature."<sup>4</sup> When construing a statute, we look first to its text and its relationship to other statutes, and if, after doing so, "the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."<sup>5</sup>

Looking first, as we must, to the pertinent statutory text, General Statutes § 1-91 (p) defines "public official" to include the following:

- any state-wide elected state officer,
- any member or member-elect of the General Assembly,
- any person appointed to any office of the legislative, judicial or executive branch of state government by the Governor, with or without the advice and consent of the General Assembly,
- the spouse of the Governor and

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<sup>2</sup>"Registrant" is defined in General Statutes § 1-91 (q) as a person who is required to register as a lobbyist under General Statutes § 1-94.

<sup>3</sup>The term "necessary expenses" is defined as "a public official's or state employee's expenses for an article, appearance or speech or for participation at an event, in his official capacity, which shall be limited to necessary travel expenses, lodging for the nights before, of and after the appearance, speech or event, meals and any related conference or seminar registration fees." General Statutes § 1-79 (q).

<sup>4</sup>(Internal quotation marks omitted.) *Perodeau v. Hartford*, 259 Conn. 729, 735, 792 A.2d 752 (2002).

<sup>5</sup>General Statutes § 1-2z.

- any person appointed or elected by the General Assembly or any member of either house thereof.

To determine whether a state court judge, as such, fits within any of those categories, we turn to the Connecticut constitution, which sets out the framework for judicial appointment. Article fifth, § 2, of the Connecticut constitution, as amended by article twenty of the amendments, provides: “The judges of the supreme court, of the appellate court and of the superior court shall, upon nomination by the governor, *be appointed by the general assembly* in such manner as shall by law be prescribed.”<sup>6</sup> Given that a state court judge is an appointee of the General Assembly, and that § 1-91 (p)’s definition of “public official” includes “any person appointed . . . by the General Assembly,” it follows that a state court judge is, for purposes of the Lobbyist Code, a “public official.”

But our inquiry does not end there, for § 1-2z directs us to consider not only § 1-91 (p)’s language, but also its relationship to other statutes. And that brings us from the Lobbyist Code to the Public Officials Code,<sup>7</sup> which has its own definition of “public official,” enacted in the same legislative session as § 1-91 (p).<sup>8</sup> That definition, found in General Statutes § 1-79 (k), is similar to the Lobbyist Code’s definition of “public official,” but it differs on a key point: it expressly excludes from its reach “a judge of any court either elected or appointed.”<sup>9</sup> In other words, a state court judge is not a “public official” under the Public Officials Code and, therefore, not subject to its provisions.<sup>10</sup>

If the legislature had intended to exclude state court judges from the Lobbyist Code’s definition of “public official,” then it could have used similar exclusionary language in § 1-91 (p) as was used in § 1-79 (k) of the Public Officials Code. But it did not, and its failure to do so can be construed only as the deliberate intent of the legislature to

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<sup>6</sup>(Emphasis added.)

<sup>7</sup>Chapter 10, part I, of the General Statutes.

<sup>8</sup>See Public Acts 1977, Nos. 77-600 and 77-605.

<sup>9</sup>General Statutes § 1-79 (k). The Public Officials Code’s definition of “state employee” does likewise. See General Statutes § 1-79 (m).

<sup>10</sup>Instead, state court judges are subject to the Code of Judicial Conduct, over which the Office of State Ethics has no jurisdiction.

include state court judges within § 1-91 (p)'s scope.<sup>11</sup> "That the legislature, in the same [legislative] session . . . spelled out both definitions serves to underscore this conclusion."<sup>12</sup> Indeed, "[t]here is a presumption that the legislature, in enacting a law, did so in view of existing relevant statutes and intended it to be read with them so as to make one consistent body of law. . . . This is particularly so when all statutes are dealt with in the same session."<sup>13</sup> And so, having looked at the language of § 1-91 (p) and its relationship to § 1-79 (k), we conclude that its plain and unambiguous meaning is this: that Connecticut state court judges are "public officials" under the Lobbyist Code.<sup>14</sup>

That leaves for us to determine whether our interpretation of § 1-91 (p) would yield absurd or unworkable results, within § 1-2z's meaning. According to our Supreme Court, "unworkable" means that the interpretation is "not capable of being put into practice successfully,"<sup>15</sup> while "absurd" means that it "would yield a ridiculous result."<sup>16</sup> In this case, there is nothing "unworkable" about including state court judges within the Lobbyist Code's definition of "public official." In fact, it means only that registrants may not knowingly give them "gifts,"<sup>17</sup> and that registrants must, at times, report the payment or reimbursement of their "necessary expenses."<sup>18</sup> Nor is there anything "absurd" about it, as it is entirely reasonable for the legislature to have intended to prohibit registrants from knowingly giving gifts to *any* state servants.

Having concluded that our interpretation of § 1-91 (p) is neither unworkable nor absurd, we turn to the petitioned question of whether a client registrant may pay a state court judge's (i.e., a "public official's")

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<sup>11</sup>See *International Business Machines Corp. v. Brown*, 167 Conn. 123, 134, 355 A.2d 236 (1974).

<sup>12</sup>*Id.*

<sup>13</sup>(Citations omitted; internal quotation marks omitted.) *Id.*, 135.

<sup>14</sup>Having concluded that state court judges are "public officials," as defined in § 1-91 (p), we need not determine whether they are "state employees," as defined in General Statutes § 1-91 (s).

<sup>15</sup>(Internal quotation marks omitted.) *Rivers v. New Britain*, 288 Conn. 1, 17, 950 A.2d 1247 (2008), citing *The American Heritage Dictionary of the English Language* (3d Ed. 1992).

<sup>16</sup>*Rivers v. New Britain*, *supra*, 32 (Schaller, J., dissenting).

<sup>17</sup>See General Statutes § 1-97 (a).

<sup>18</sup>See General Statutes § 1-96e.

“necessary expenses” in connection with the judge’s speech at the registrant’s conference. The relevant Lobbyist Code provision (indeed, the only one that addresses “necessary expenses”) is General Statutes § 1-96e, and it says this:

Each registrant who pays or reimburses a public official . . . ten dollars or more for necessary expenses, as defined in section 1-79, shall, within thirty days, file a statement with the Office of State Ethics indicating the name of such individual and the amount of the expenses.

That language presumes that a registrant may pay or reimburse a public official for “necessary expenses,” which § 1-79 (q) defines, in relevant part, as follows: “a public official’s . . . expenses for a[] . . . speech . . . in his official capacity, which shall be limited to necessary travel expenses, lodging for the nights before, of and after the . . . speech . . . meals and any related conference or seminar registration fees.”<sup>19</sup> Thus, we conclude that a client registrant may pay a state court judge’s “necessary expenses” in connection with the judge’s speech at the registrant’s conference.

As for reporting, § 1-96e requires the client registrant to file a statement with the Office of State Ethics, within thirty days of payment, if the value of the “necessary expenses” is \$10 or more. There is, however, no corresponding reporting obligation for the judge.<sup>20</sup>

By order of the Board,

Dated \_\_\_\_\_

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Chairperson

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<sup>19</sup>General Statutes § 1-79 (q).

<sup>20</sup>A provision in the Public Officials Code requires a “public official” or “state employee” who receives payment or reimbursement of “necessary expenses” to file a statement under certain circumstances. See General Statutes § 1-84 (k). But as shown above, state court judges are not “public officials” or “state employees” *under the Public Officials Code*, meaning they are not subject to this requirement.